Filed 5/10/19 In re Helena T. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

In re HELENA T., et al., Persons Coming Under the Juvenile Court Law.	B291617
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. AMANDA T., Defendant and Appellant.	(Los Angeles County Super. Ct. No. 18CCJP01512)

APPEAL from orders of the Superior Court of Los Angeles County, D. Brett Bianco, Judge. Affirmed.

Keiter Appellate Law and Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel and Kim Nemoy, Principal Deputy County Counsel for Plaintiff and Respondent.

Patricia G. Bell, under appointment by the Court of Appeal, for Minors.

Amanda T. (mother) appeals from the juvenile court's jurisdictional and dispositional orders, which established jurisdiction under Welfare and Institutions Code[1] section 300, subdivision (b) over mother's twin daughters and removed them from her custody. We conclude that the jurisdictional and dispositional orders are supported by substantial evidence of mother's drug use and extreme neglect, and thus we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Referral and Investigation

Mother and Phillip H. (father) are the parents of twin girls, Helena T. and Hannah T., who were born in October 2006. The parents are married, but they have lived separately since December 2010.

In March 2018, the Los Angeles County Department of Children and Family Services (DCFS) received a referral from the Glendora Police Department that mother, mother's boyfriend Kirk S., the twins, and several cats were living in their car in a Walmart parking lot. According to the police department's incident report, the car was extremely dirty, full of cat hair, smelled strongly of cat feces, and contained a rifle. The children were dirty and smelled as if they had not showered in days. Mother told the police that the children were home-schooled, but the officers did not find any books or school supplies in the car.

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[1] All subsequent undesignated statutory references are to the Welfare and Institutions Code.

Mother told the police that she was being harassed by "several family members of the Mayor of Azuza."

A children's social worker (CSW) attempted to interview mother, who was described as "talking very quickly," "going off topic when asked a specific question," and "unable to communicate in a normal manner." Mother initially stated father was deceased, but then said she did not have contact information for him. Mother said she had been diagnosed with bipolar disorder and post traumatic stress disorder. She admitted using methamphetamines in the past and smoking marijuana several times per week. She refused to submit to a drug test.

Kirk said he regularly smoked marijuana and recently had used methamphetamines. He and mother had been in a relationship for two and a half years and had been staying in the Walmart parking lot for about two weeks. He admitted that living in the car was not good for the children, but said it was the best he and mother could do.

The girls appeared not to have showered or washed their clothes recently. Neither mother nor Kirk was employed, and the children were not attending school. Hannah said they had stopped attending school because her mother was being harassed by a teacher, and Helena said they should be in sixth grade but would need to repeat fifth grade because "they are in the process of figuring out how home school works." It appeared to the CSW that Helena had an infected eye, for which she had not received medical treatment.

DCFS concluded that mother was failing to provide basic care for her children, and that her ability to make decisions and to appreciate the risks to which she was subjecting her children

might be impaired by mental illness or drug use. DCFS therefore recommended that mother be evaluated for cognitive disabilities and mental health problems, that she be ordered to drug test, and that the children be removed from mother's custody.

B. Petition; Detention Hearing

On March 7, 2018, DCFS filed a juvenile dependency petition alleging jurisdiction over the children pursuant to section 300, subdivision (b). The petition alleged that mother had a history of substance abuse and was a current abuser of marijuana, which rendered her incapable of caring for and supervising the children (count b-1), and that mother allowed her male companion, Kirk S., who abused illicit drugs, to reside in the children's home, placing the children at risk of harm (count b-2).

On March 8, 2018, the court ordered the children removed from mother's care and placed in DCFS custody. It further ordered DCFS to provide mother with family reunification services and housing assistance, ordered a multidisciplinary assessment of the children and family, and ordered mother to drug test.

C. Jurisdiction/Disposition Report

Father told DCFS that he and mother had been in a relationship between 2005 and 2010, and had married in 2008. They had never divorced, but had lived separately since December 2010. Father had had regular visitation with the children between 2010 and 2015, but for the last several years mother had kept him from seeing the children. Father admitted a past drug problem and criminal record for drug possession, but said he had been clean since 2006. He currently was working as a long-distance truck driver. He planned to rent an apartment

near his mother and other family members in Needles, California, and to find local employment in order to provide a stable home for the girls. Father said he could transport the girls to weekly visits with mother.

Mother said she began using methamphetamines when she was 11 years old, and stopped only when she became pregnant with the children. She began smoking marijuana as a child and continued to do so, but said she never smoked inside the car or around her children. Mother failed to drug test on March 23, and tested positive for cannabinoids on March 30 and April 4, 2018.

The maternal aunt said that mother began abusing substances as a teenager and " 'goes in and out of drug use. She gets sober completely and then starts using pot and drinking and then starts using meth[amphetamines] and speed and hits rock bottom. She then starts the whole cycle over again.' " The maternal aunt said the children were consistently neglected in mother's care.

The foster mother reported that the girls showed little emotion for mother during visits; between visits, the girls did not ask about mother or any other family members. The girls visited with the paternal grandmother and aunt in March; the foster mother reported that the girls appeared happy to see them and appeared comfortable in their presence.

The girls' educational records indicated that they last attended school in October 2016, eighteen months before they were detained.

D. Supplemental Report

In an April 20, 2018 "Last Minute Information for the Court" (LMI), DCFS reported that father had rented a home in Needles, California, where he had extended family support from

the paternal grandmother and aunt. Father had live-scanned and drug tested, and was scheduled to visit with the children on April 22.

Father provided DCFS with a copy of a current family law order granting father visitation with the children, as well as correspondence between the parents through a court messaging service called "Talking Parents." According to DCFS, the correspondence, which was attached to the LMI, "indicates that mother has not allowed father to have visitation with the children, despite his repeated attempts to see the children. It also shows that [mother] texted him on his personal cell phone, against court orders, attempting to solicit additional money from him, over the court ordered child support, in order for him to see his children. Throughout the written communication logs, which [are] only supposed to be used for information regarding the children, mother is verbally degrading and threatening to the father."

With regard to mother, DCFS advised that mother had posted portions of the jurisdiction/disposition report on Facebook, "mocking the court proceedings and the reasons for DCFS intervention." Further, the foster mother had become concerned with mother's behavior and had asked to have mother's visits professionally monitored; and mother had directed text messages to the case workers that were described as "digressive and excessive in their language."

DCFS concluded: "[A]ll professionals that mother has had contact with during this investigation indicate the suspicion of an underlying mental health disorder . . . [and] it was the hope that mother would seek mental health services to assist her in managing the extreme behaviors. However, since she received

the written copy of the [jurisdiction] report, she has been threatening and extreme in her actions and it is apparent she is suffering from something much deeper than a substance abuse issue. For this reason, DCFS respectfully recommends that [the] Court order a complete 730 psychiatric/psychological evaluation of mother in order that a true picture of her functioning can be obtained."

E. Jurisdiction and Disposition Hearings

On April 24, 2018, the juvenile court sustained the allegations of the petition, found the children to be within the court's jurisdiction, and continued the disposition hearing.

In May 2018, DCFS reported that mother had missed six drug tests in April and May, refused to meet with DCFS, threatened her social worker, and had ceased all communication with her children. Mother reportedly had told her CSW that she refused to participate in any court-ordered programs or to drug test because her children should not have been detained. Father had rented a two-bedroom house and was finalizing arrangements for a new job. The paternal grandmother was willing to help father with childcare. Father had an overnight visit with the girls in May and said both girls wanted to live with him.

On May 31, 2018, the court found by clear and convincing evidence pursuant to section 361, subdivision (c) (section 361(c)) that there was substantial danger to the physical health, protection, or physical or emotional well-being of the children; there were no reasonable means by which the children could be protected without removing the children from mother; and DCFS had made reasonable efforts to prevent removal from mother. The court thus ordered the children removed from mother and

placed with father. It then granted father sole legal and physical custody of the children, granted mother weekly monitored visitation, and terminated court jurisdiction. Mother was ordered to participate in a full drug program, parenting program, and to submit to a psychiatric evaluation prior to any change in custody.

Mother timely appealed from the jurisdictional and dispositional orders.

DISCUSSION

I.

Mother Has Not Demonstrated That the Juvenile Court Prejudicially Erred by Admitting Text Messages Exchanged Between Mother and Father

Mother contends the trial court erred by admitting into evidence a series of messages exchanged between mother and father in 2016 and 2017, which DCFS attached to the April 20, 2018 LMI. Mother's claim is without merit.

The trial court has broad discretion in determining the admissibility of evidence. "A trial court's ruling to admit or exclude evidence . . . is reviewed for abuse of discretion and will be upheld unless the trial court 'exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' " (*People v. Ledesma* (2006) 39 Cal.4th 641, 705; *In re Cindy L.* (1997) 17 Cal.4th 15, 35.) A judgment may not be reversed on the basis of the erroneous admission of evidence unless that error was prejudicial. " 'The record must show that the appellant "sustained and suffered substantial injury, and that a different result would have been probable if such error . . . had not occurred or existed. . . ." ' " (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 655 (*IIG Wireless*).)

In the present case, mother urges the juvenile court abused its discretion by admitting the messages between mother and father because they "did not concern [mother's] or Kirk's drug use" and thus "had no tendency in reason to prove the jurisdictional allegations." But as DCFS correctly notes, the LMI concerned both jurisdiction *and disposition*, and mother does not dispute the messages' relevance to disposition. Further, mother does not contend that the admission of the text messages, even if erroneous, was prejudicial. The admission of the text messages, therefore, forms no basis for reversal. (See *IIG Wireless*, *supra*, 22 Cal.App.5th at pp. 655—656 [no basis for reversal where appellant "fails to support, with evidence, that this testimony was so damaging that in its absence, a different result was probable"].)

II.
Substantial Evidence Supported the Juvenile Court's Jurisdictional Findings

Mother contends the juvenile court's jurisdictional findings were not supported by substantial evidence. For the reasons that follow, we do not agree.

A. Legal Standards

Section 300, subdivision (b) provides that a child is within the juvenile court's jurisdiction if he or she "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or

guardian's mental illness, developmental disability, or substance abuse."

We review the juvenile court's jurisdictional order for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) " 'In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings . . . , we determine if substantial evidence, contradicted or uncontradicted, supports [it]. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." [Citation.] "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ' "[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate]." ' " ' " (*Ibid.*)

When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

B. Analysis

In the present case, mother concedes there is evidence she used methamphetamines in the past and is a current user of marijuana. She urges, however, that "the use of drugs, 'without more,' does not support jurisdiction," and thus that the juvenile court erred in assuming jurisdiction in this case.

Mother is correct that a parent's drug use, standing alone, does not bring a child within the jurisdiction of the dependency court; instead, DCFS must present evidence "of a specific, nonspeculative and substantial risk to [the children] of serious physical harm." (*In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003.) This is not, however, a case involving a parent's substance use *without more*. To the contrary, there is substantial evidence that mother's long-term drug use—perhaps coupled with an underlying mental illness—has resulted in severe neglect of the children. As we have discussed, when the children were detained, they were living with mother and her boyfriend in a car in which the stench of cat feces was so strong it caused the detaining officer's "eyes . . . to water . . . and lungs . . . to burn." The children were filthy and unshowered, had not attended school in more than a year and a half, and had not received medical care in several years. Helena appeared to the CSW to have an eye infection for which mother had not obtained medical treatment. And mother refused to accept assistance from DCFS, insisting that she would not participate in any court-ordered programs because her children should not have been detained. Plainly, mother was not providing "regular care for the [children]" within the meaning of section 300, subdivision (b).

Mother urges that this case is analogous to *In re Roger S.* (2018) 31 Cal.App.5th 572, in which the juvenile court sustained

an allegation that a teen was within the jurisdiction of the juvenile court because he "was continuously found dirty with a foul body odor of urine and sweat, and the child repeatedly wore clothes to school that were dirty and too small for the child." (*Id*. at p. 579.) The Court of Appeal reversed, concluding that "[n]othing in the record indicates that having body odor or wearing clothes that were dirty or too small—the only circumstances alleged in the petition the juvenile court sustained—placed Roger at substantial risk of physical harm or illness. There was no nexus cited between Roger's hygiene and any medical or dental condition." (*Id*. at pp. 582—583.)

The present case is distinguishable. Here, in addition to evidence that the children had extremely poor hygiene, there was also evidence of much more serious neglect, including that the children were living in a car filled with cat feces, were not attending school, and were not receiving medical care. There was also evidence that mother used drugs regularly and, perhaps for that reason, exhibited impaired reasoning and judgment. As such, *Roger S.* does not guide our analysis.[2]

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[2] Having concluded that there is substantial evidence to support count b-1 of the petition, we do not consider whether substantial evidence also supports count b-2. (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451.)

III.
Substantial Evidence Supported the Juvenile Court's Removal Order

Mother contends substantial evidence did not support the order removing the children from her custody. For the reasons that follow, mother's contention is without merit.[3]

A. Legal Standards

Section 361(c) permits the removal of a child from the physical custody of his or her parents "with whom the child resides at the time the petition was initiated" if the juvenile court finds by clear and convincing evidence that there "is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361(c)(1).)

"A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a

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[3] DCFS urges that mother forfeited her challenge to the dispositional order because she failed to appear at the disposition hearing and provide direction to her attorney. Not so. "Generally, issues not raised in the trial court cannot be raised on appeal. 'The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule.' [Citation.] In other words, when the merits of a case are contested, a parent is not required to object to the agency's failure to carry its burden of proof." (*In re Javier G.* (2006) 137 Cal.App.4th 453, 464.) Because mother challenges the sufficiency of the evidence supporting the dispositional order, we may address the issue for the first time on appeal.

potential detriment to the child if he or she remains with the parent. [Citation.] 'The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The court may consider a parent's past conduct as well as present circumstances. [Citation.]" (*In re N.M.* (2011) 197 Cal.App.4th 159, 169–170.)

On appeal, we review a removal order for substantial evidence. (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.) We do not reweigh the evidence or express an independent judgment, but instead determine "whether 'a reasonable trier of fact could have found for the respondent based on the whole record.' " (*Ibid.*)

B. Analysis

Mother contends the juvenile court erred in removing the children from her custody because there were reasonable means by which the children could have been protected without removing them from her custody. But as DCFS and the children note, by the time of the dispositional hearing, mother had absented herself from the juvenile court proceedings and was refusing to drug-test, participate in any programs, or visit the children, telling DCFS that she should not have to participate because the children should not have been removed from her. In view of mother's demonstrated unwillingness to accept any services DCFS offered, substantial evidence supported the juvenile court's conclusion that there were no reasonable means by which the children could have been protected without removing them from mother's custody.

The present case thus does not resemble *In re Jeannette S.* (1979) 94 Cal.App.3d 52, on which mother relies. There, the

juvenile court ordered a child removed from her mother's custody because the family lived in a filthy home and the child was sent to school in dirty clothes. The Court of Appeal reversed, concluding that the court had "two reasonable alternatives available to it short of awarding custody to the Department"—namely, ordering homemaking services to mother to assist her in keeping her home clean, and placing the child with her father. (*Id.* at pp. 60—61.) Having failed either to order the services to assist the mother or to place the child with her father, the Department had failed to prove parental inability to care for the child by clear and convincing evidence. (*Id.* at p. 60.)

The present case is distinguishable. As we have said, the *Jeannette S.* court's first alternative was not feasible here because mother refused to accept services. The court's second alternative—placing the twins with their father—*was* feasible and has already been implemented by the juvenile court.

Mother also contends that the court erroneously removed the children from her care based solely on her extreme poverty. Mother is correct that a court "cannot separate parents and their children simply because they are poor" (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 792), but that is not what happened in this case. Instead, as we have said, the children were suffering extreme neglect, in significant part because mother repeatedly refused to accept the services offered to her. The juvenile court therefore did not err in ordering the children removed from her care.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.